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KIRBY CORPORATION



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September 6, 2002

Document Management Facility (MARAD-2002-12842) – 5
U.S. Department of Transportation
Room PL-401
Four Hundred Seventh Street, S.W.
Washington, DC 20590-0001

Re: General Approval of Time Charters – Policy Review with Request for Comments
(Docket No. MARAD-2002-12842)

Dear Sir or Madam:

Kirby Corporation very much appreciates this opportunity to present its comments in response to the Maritime Administration's Policy Review with Request for Comments regarding General Approval of Time Charters (Docket No. MARAD-2002-12842).

Kirby Corporation, through its vessel operating subsidiaries, is a major operator of towing vessels and tank barges on the inland waterways of the United States. Currently, Kirby operates 205 inland towing vessels and 877 inland tank barges, with over 15 million barrels of capacity, all engaged in the coastwise trade. Those towing vessels and the majority of those tank barges are documented vessels with coastwise endorsements. Those tank barges which are not documented engage in the coastwise trade pursuant to 46 USC 12110(b). Kirby employs its vessels to provide transportation services to a wide array of manufacturers, refiners, traders and other shippers, including most of the nation's major oil and chemical companies, many of which do not qualify as citizens entitled to engage in the coastwise trade under the laws of the United States.

While the majority of those transportation services are performed on an affreightment basis, as a matter of commercial practice, a measurable portion of those services is performed on a time charter basis. Services are provided on a time charter basis primarily in deference to the commercial preferences of our customers, who may, for example, wish to ensure the availability of certain transportation capacity or to dedicate a certain barge to their service in order to reduce costs associated with cleaning and preparing barges to carry their cargoes. Time charter transportation services to entities which we believe would not qualify as coastwise citizens amounted to approximately five percent of revenues in 2001.

For our customers that do not qualify as coastwise citizens, the general approval of time charters in 46 CFR 221.13 is essential to this practice. Given the responsiveness which is necessary for a carrier to secure many inland marine transportation requirements, the likely delay associated with MARAD review of each proposed time charter arrangement would effectively eliminate the time charter option. Therefore, we do not favor the reinstatement of a requirement for MARAD review and written approval of a time charter of a documented vessel to noncitizen when the time charter is for the purpose of providing services to that noncitizen for the transportation of its cargoes. Doing so would unnecessarily constrain domestic commerce to the detriment of the very interests intended to be protected by U.S. cabotage laws.

We are aware, however, that a noncitizen entity has recently used the general approval of time charters in 46 CFR 221.13 to circumvent those cabotage laws in order to gain economic control of a domestic operator and the services of U.S.-flag vessels and to engage in the coastwise trade in unfair competition with coastwise qualified citizens, all apparently with the willing assistance of a coastwise qualified entity. We strongly oppose this devious use of the general approval of time charters.

Accordingly, we urge MARAD to take the regulatory action necessary to narrow the scope of the general approval of time charters contained in 46 CFR 221.13 so as to limit the coastwise use of a documented vessel, time chartered to a noncitizen, to the transportation of the charterer's cargo and to preclude the redeployment of the vessel by the charterer in commercial coastwise trade. We believe that this could be accomplished with simple revisions to the existing provisions of 46 CFR 221.13.

We thank you for this opportunity to present our comments and would be pleased to answer any questions that the Maritime Administration may have, now or in the future.

Very truly yours,

A handwritten signature in black ink, appearing to read 'G. Gallion', with a long horizontal line extending to the right.

Gerald A. Gallion
Corporate Counsel